



## THE OFFICE OF AGRICULTURE

Marc Elrich  
County Executive  
January 14, 2022

Jeremy V. Criss  
Director

The Honorable Gabe Albornoz, President  
Montgomery County Council  
100 Maryland Avenue  
Rockville, MD 20850

Re: ZTA 21-07 - Density and Height Allocation – Development with Moderately Priced Dwelling Units

Dear Council President Albornoz,

Please accept this letter from the Office of Agriculture-OAG as a follow up from our November 8, 2021, letter on ZTA 21-07. The OAG has been working with the Margaret Chasson, Chair of the Agricultural Committee of the League of Women Voters on this ZTA 21-07.

We understand and support all efforts to expand opportunities for creating affordable housing in Montgomery County. We would like to propose another idea that should be considered as part of a new and separate Zoning Text Amendment. We need to encourage the Park and Planning to reemphasize the use of both TDRs/BLTs. Promises were made to farmers and landowners that sufficient capacity for TDRs and BLTs would be created to build back a portion of equity the County took away from farmers in 1980 when the Agricultural Reserve was established. We recommend the use of TDRs and BLTs should be the first-choice requirement for developers building affordable housing and here is how it would work.

### **Example Amend Section 4.9.17. Transferable Development Rights (TDR) Overlay Zone**

ii. Each single TDR purchased allows the construction of the following number of units up to the TDR density designation:

*Please see the proposed additions in bold and underlined and deleted information that is bracketed.*

- (a) In a Metro Station Policy Area:
  - (1) **4** [2] detached houses;
  - (2) **5** [2] units in a duplex building type;
  - (3) **8** [2] units in a townhouse building type; or
  - (4) **10** [3] units in an apartment building type.
- (b) In a Non-Metro Station Policy Area:
  - (1) **2**[one] detached house unit;
  - (2) **5** [one] unit in a duplex building type;
  - (3) **8** [one] unit in a townhouse building type; or
  - (4) **10** [2] units in an apartment building type.

## Calculation of TDRs Required in the Commercial/Residential or Employment Zones

- i. TDRs may be purchased to achieve the maximum residential FAR indicated under the TDR Overlay zone. A fraction of a TDR cannot be purchased; any fraction of a TDR must be rounded up to the next whole number.
- ii. Each TDR purchased allows the construction of **4,000 [2,400]** square feet of residential density, except for in a Metro Station Policy Area, which allows the construction of **8,000 [4,400]** square feet of residential density.

A diverse, highly populated county requires forward thinking policy decisions to meet the needs of its citizens. We appreciate the need for affordable housing with an estimated 40,000 additional units needed in the next ten years. This ZTA aims to assist the construction of more affordable units by exempting FAR limits and requiring rent control over a thirty-year plus period.

Just as this ZTA is an attempt to meet the needs of the citizenry of the County so was the creation of the Agricultural Reserve in 1980. By down-zoning one-third of the County, policy makers saw the benefit of maintaining a critical mass of farmland and open space. While some farmers were not happy at the time, the agricultural community knows now it was a vital decision to create a thriving farming economy. Part of the buy-in from the farmers was knowing there was an ability to recoup a portion of their lost equity by selling TDRs and more recently BLTs.

Farmers have been struggling to sell TDRs and BLTs since the creation of the program. At times there has been some demand from developers for their projects. However continued decisions by the County deemphasize the use of TDRs and BLTs in development projects. The ambiguity clause found in Chapter 59.4.1 C states, "Development in an Overlay zone must satisfy the standards and requirements of the underlying zone, except as modified by Division [4.9](#). If there is an ambiguity as to whether the requirements of the underlying zone or Overlay zone apply, the requirements of the Overlay zone apply. Site plan approval is required under Section [7.3.4](#), except where exempted by the applicable Overlay zone." The Office of Agriculture believes these initiatives have created an environment where the use of TDRs and BLTs is limited and deemphasized in overlay zones. When the Ten Mile Creek area was rezoned to no longer be a TDR receiving area, the County again deemphasized the use of TDRs. If enacted, this ZTA will be another decision deemphasizing the ability for farmers to recoup a portion of their lost equity in the CR zones.

We acknowledge that multi planned development units-MPDUs and the CRT zone have never required the use of TDRs or BLTs. However, the proposed language from lines 34-40 will create new incentives for the CR zones used for affordable housing that will ultimately result in limiting the use of TDRs and BLTs and serve another example of deemphasizing both TDRs and BLTs.

Farmers have been living up to their end of the agreement in the Agricultural Reserve, preserving farmland, investing in the economy, creating jobs and providing locally produced food to those in need by the Farm to Food Bank Program. Farmers know there is need for affordable housing, but the County continues to ignore how the TDRs and BLTs provide opportunities for farmers to generate equity for expanding agricultural production. This ZTA also shows the County is not interested in living up to their end of the agreement made 41 years ago when the Agricultural Reserve was created.

We look forward to working with your office on a positive solution to this matter.

Sincerely,

*Jeremy V. Criss*

Jeremy V Criss, Director, Office of Agriculture

cc: Doug Lechliden

Michael Jamison

Robert Butz

Lonnie Luther

Bob Cissel